



**UNITED STATES BANKRUPTCY COURT
DISTRICT OF VERMONT**

In re:

**Geoffrey David Muther and
Kathy Doris Muther,
Debtors.**

**Chapter 13 Case
12-10029**

**Geoffrey David Muther and
Kathy Doris Muther,
Plaintiffs,**

**Adversary Proceeding
12-1002**

v.

**CitiMortgage, Inc., Fidelity Mortgage
Of NY, A Division of Delta Funding
Corporation; Mortgage Electronic
Registration Systems, Inc.,
Defendants.**

Appearances:

*Michelle M. Kainen, Esq.
Kainen Law Office, P.C.
White River Junction, VT
Attorney for Plaintiffs*

*Shannon A. Bertrand, Esq.
Kenlan, Schweibert, Facey & Goss, P.C.
Rutland, VT
Attorney for Defendants*

*Andrew S. Canella, Esq.
Bendett & McHugh, P.C.
Farmington, CT
Attorney for Defendants*

ORDER

**GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT,
DENYING PLAINTIFFS' CROSS-MOTION FOR SUMMARY JUDGMENT,
AND DENYING DEFENDANT CITIMORTGAGE'S MOTION FOR SANCTIONS**

For the reasons set forth in the memorandum of decision of even date, THE COURT FINDS that, under Vermont's homestead laws, (i) Mrs. Muther needs to have a homestead interest in the Property¹ in order to be a necessary party to the 2007 Fidelity Mortgage, and to challenge the validity of that mortgage, under 27 V.S.A. § 141(a); (ii) Mrs. Muther's homestead interest was extinguished by the 1997 Conveyance by virtue of the retroactive application of 27 V.S.A. § 141(d), thereby depriving her of the right to challenge the validity of the 2007 Fidelity Mortgage; and (iii) neither the terms of the 1997 Conveyance, nor Mrs. Muther's post-conveyance conduct, are sufficient to revive her homestead interest in the Property. Accordingly, the Plaintiffs' prayer for relief in the complaint to void the 2007 Fidelity

¹ All capitalized terms in this order have the same definition as set forth in the Memorandum of Decision.

Mortgage is denied and the Defendants are entitled to judgment as a matter of law in this adversary proceeding. THE COURT FURTHER FINDS that the Defendant CitiMortgage has failed to establish a sufficient legal basis for an award of sanctions in this case.

Therefore, IT IS HEREBY ORDERED that:

1. the Defendants' motion for summary judgment, originally filed as a motion to dismiss (doc. # 10), is GRANTED;
2. the Plaintiffs' cross-motion for summary judgment, originally filed as an objection to the Defendants' motion to dismiss (doc. # 16), is DENIED;
3. judgment is entered in favor of the Defendants in this adversary proceeding; and
4. the Defendant CitiMortgage's motion for sanctions (doc. # 15) is DENIED.

SO ORDERED.

September 28, 2012
Burlington, Vermont



Colleen A. Brown
Colleen A. Brown
United States Bankruptcy Judge